

Response to Office action of November 21, 2008

REMARKS/ARGUMENTS

Claims 62-78, and 102-175 are pending in the application. Claims 62, 102, 111, 117, 125, 140, 156 and 170 are independent.

Claims 1-61, and 79-101 are withdrawn.

Claim 62 is amended. Support for the amendment is found throughout the specification and the originally filed claims. No new matter is added.

Claims 102-175 are added. Support for these new claims is found throughout the specification. No new matter is added.

Reconsideration is respectfully requested based on the remarks submitted below.

I. Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1. In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-61, 98-101, drawn to a method of whitening teeth.

Group II, claim(s) 62-78, drawn to a liquid oral therapeutic dental compositions.

Group III, claim(s) 79-97, drawn to a therapeutic dental delivery device.

The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical featured of the Group I invention is the particular second tooth whitening composition

Response to Office action of November 21, 2008

claimed therein while the special technical feature of the Group II invention is the particular moisture responsive gel carrier claimed therein. Since the special technical feature of the Group I invention is not present in the group II invention being claimed and the special technical feature of the group II invention is not present in the group I invention being claimed, unity of invention is lacking.

The inventions listed as Groups I and III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical featured of the Group I invention is the particular second tooth whitening composition claimed therein while the special technical feature of the Group III invention is the particular applicator claimed therein. Since the special technical feature of the Group I invention is not present in the group II invention being claimed and the special technical feature of the group III invention is not present in the group I invention being claimed, unity of invention is lacking.

The inventions listed as Groups II and III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical feature of the Group II invention is the particular moisture responsive gel carrier claimed therein while the special technical feature of the Group III invention is the particular applicator claimed therein. Since the special technical feature of the Group II invention is not present in the group III invention being claimed and the special technical feature of the group III invention is not present in the group I invention being claimed, unity of invention is lacking.

Applicant hereby elected group II with traverse and has withdrawn claims 1-61

Response to Office action of November 21, 2008

and 79-101.

Applicant respectfully traverses the restriction to preserve the issue for subsequent petition. Applicant believes that the examination of all of the claims should not create an undue burden on the USPTO. While Applicant agrees that the subject matter of each group is independently patentable, differences in classifications as recited by the USPTO are not adequate grounds for restriction since the USPTO has historically examined applications containing multiple sets of claims.

Applicant further respectfully submits that the currently pending claims should not limit Applicants' future pursuit of different claims that may be similar or distinct from the elected inventions currently identified by the Office, and respectfully reserve the right to pursue original and any other claims in this and any other application.

Applicant also respectfully requests that if a generic claim is found to be allowable, Applicant has the right to rejoin or add claims, which may not be encompassed in the present elected species, and which may either depend or otherwise require the limitations of an allowable generic claim.

Accordingly, Applicant notes that the present response notwithstanding, the invention elected for prosecution in this application should not be viewed as limited by the identified claims, but should enjoy the full scope of the claims issued in any patent maturing from this application.

In addition, Applicant respectfully submits that claim 61 belongs to Group II, as it also includes a "moisture responsive gel carrier".

Reconsideration is respectfully requested.